IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

MONDAY, THE TWENTIETH DAY OF JUNE
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE K.C. BHANU

WRIT PETITION NO : 21994 of 2003

Between:

M.A.Sattar Ansari, S/o M.A.Khader,
R/o 5-8-106/4, Manyam Chalka Street,
Nalgonda, Nalgonda Dist.

..... PETITIONER

AND

1 The Chairman, Agriculture Market Commitee,
Chandur, Nalgonda District.
2 The S.H.O, Chandur P.S.,
Chandur, Nalgonda,
Nalgonda District.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to to issue an order or direction or a writ more particularly a Writ of Mandamus to declare the Complaint dated 17/11/99 of Respondent No.1 are in violation of Rule 25,27 and Rule 47 of the AP (Agricultureal Produce and livestock) Markets Act, 1966 and also Sec 49 of the By law 2 the Market Committee as they are violative of the principles of natural justice as enshrined under the constitution of India leading to the violation of the petitioners fundamental rights as contained under Article 14 and 21 of the Constitution of India. Consequently the Hon'ble Court may be pleased to set aside the impugned complaint dated 17/11/1999.

Counsel for the Petitioner: MR.S.S.Varma

Counsel for the Respondents: VVN Narayana Rao & GP FOR HOME

The Court made the following :

THE HONOURABLE SRI JUSTICE K.C.BHANU

WRIT PETITION NO.21994 OF 2003

ORDER:

This writ petition is filed to declare the complaint dated 17.11.1999 of the first respondent is in violation of Rule 25, 27 and Rule 47 of the A.P. (Agricultural Produce and Livestock) Markets Act, 1966 (hereinafter referred to as "the Act") and Section 49 of the Bye-laws and consequently to set aside the impugned complaint dated 17.11.1999.

The brief facts that are necessary for the disposal of the present writ petition may be stated as follows:

The petitioner was on leave from 14.4.1999 to 5.5.1999 and he resumed his duty on 5.5.1999. He was served with suspension order on 23.4.1999 alleging that he absconded from his duties. While so, the first respondent issued a complaint dated 17.11.1999 to the second respondent stating that there is large scale embezzlement of market committee funds by him.

The case of the petitioner is that he was not in-charge of the maintenance of accounts and other records, that there was no sanction by the market committee muchless an authorization in writing by any person to institute such proceedings as contemplated under Rule 25 of the Act. That the second respondent has acted upon the complaint given by the first respondent, that the action of the first respondent is also in violation of Rule 47 of the Act.

The respondents filed counter stating that as the petitioner was absconded from duty after misappropriating an amount of Rs.37,87,748/-, the first respondent lodged a complaint with the second respondent seeking to conduct enquiry against the petitioner. Hence, a case was registered against the petitioner since the petitioner cleverly with *mala fide* intention misled this Court as Section 25 of the Act applies only to the traders. Rule 25 of the Act has nothing to do with the acts committed by

the petitioner and the petitioner absconded from duties with records and with a *mala fide* intention and in view of the stay granted by this Court, the criminal proceedings have been stalled. Hence it is prayed to dismiss the writ petition.

The matter was listed before this Court on 06.6.2005, but none appeared for the parties and therefore, the matter was posted to 13.6.2005. On 13.6.2005 at the request of the learned counsel for the petitioner, it was posted to 14.6.2005 and again on 14.6.2005 at the request of the learned counsel for the petitioner the matter was posted to 17.6.2005, however it was made clear that no further adjournments will be granted. Now, the counsel for the petitioner reported no instructions. Heard the learned Standing Counsel for the respondents.

It is contended by the learned Standing Counsel appearing for the respondents that the complaint made by the first respondent does not violate Rules 25, 27 and 47 of the Act and also Section 47 of the bye-laws made thereunder, therefore, misappropriating the funds to a tune of more than Rs.37 lakhs and obtaining stay of prosecution, is nothing but abuse of process of Court by the petitioner.

There cannot be any dispute that it is a statutory duty of the police to conduct investigation and that statutory duty cannot be curtained or interdicted by any other except when the allegations do not make out a prima facie case of the offence. The grievance of the petitioner is that the complaint dated 17.11.1999 issued by the first respondent is in violation of Rules 25, 27 and 47 of the Act. Rule 25 deals with Resignation or removal of member of a Market Committee, Rule 27 deals with Powers and duties of market committee, and Rule 46 deals with Prosecution. Rule 46 states that no prosecution shall be instituted for any breach of any of these rules without the previous sanction of the market committee. This provision relates to licensed person. Rule 47 deals with exercise of powers to right off irrecoverable amounts. It is stated in the affidavit that Section 25 of the Act deals with Trial of offences, wherein it is stated that prosecutions may be instituted by any person duly authorized in writing by the market committee. In the case on hand, the market committee by its President issued the complaint therefore, the question of authorization does not arise. Section 27 deals with Powers of the Directors with regard to Revision either suo motu or on application made to him. Therefore, that section has no application. So there is no violation by the first respondent in lodging complaint. The petitioner having obtained stay stalled the criminal prosecution

nearly for two years and now the petitioner intends to drag on the matter, therefore, there is no justification in keeping the writ petition pending particularly in view of the fact that no specific allegation is made that the first respondent is not the competent authority to lodge complaint. The complaint lodged by the first respondent cannot be said to be contrary to the laws. Once the first respondent lodged the complaint, then it is the statutory duty of the police to investigate the case and that statutory duty cannot be curtained. Hence, the writ petition is devoid of merits and is liable to be dismissed.

Accordingly, the writ petition is dismissed. Interim stay granted by this Court on 11.11.2003 shall stands vacated. No order as to costs.

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K.C.BHANU,J

20th June, 2005.

Note:

Issue C.C.in One week.

B/o.

Mdaa

Copy to:

1 The Chairman, Agriculture Market Commitee,
Chandur, Nalgonda District.
2 The S.H.O, Chandur P.S.,
Chandur, Nalgonda,
Nalgonda District.

3. Two C.D.copies.